

**JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION
OF THE VIRGINIA GENERAL ASSEMBLY**

**Implementation of
The Chesapeake Bay
Preservation Act**

IV. Expanding Bay Act Program Coverage in Virginia

The Chesapeake Bay watershed covers more than half of the land area in Virginia. Because the Chesapeake Bay Preservation Act (Bay Act) applies to only 35 percent of Virginia's Bay watershed, the remaining 65 percent (14,000 square miles) of Virginia's portion of the watershed is not subject to its provisions. The current Bay program, then, does not apply to 109 cities, counties, or towns in Virginia's portion of the Chesapeake Bay watershed.

The 2001 General Assembly considered requiring an expansion of the Bay Act to the entire Chesapeake Bay watershed in Virginia, but took no final action. Instead, it passed House Joint Resolution (HJR) 622 requiring, in part, that the Chesapeake Bay Local Assistance Department (CBLAD) assess the benefits to the environment, the changes in regulations, and the financial resources needed to extend the requirements of the Bay Act, and report those findings to JLARC.

CBLAD's findings and conclusions appear in the department's *HJR 622 Study: Chesapeake Bay Preservation Act – Expansion* report. A copy of the executive summary of this report is provided as Appendix C to this JLARC report. Also, the full report is currently available for downloading from the CBLAD web site.

Based on the benefits qualitatively described in its report, as well as CBLAD's view that an expansion of the Bay program will be necessary to meet the State's commitments under the 2000 Agreement of the Chesapeake Bay Program, CBLAD concludes that a westward expansion is warranted. CBLAD recommends that the vehicle used to cover most of the expanded activity should be a separate Act, however, possibly entitled the "Chesapeake Bay Rivers Act."

The CBLAD report appears to reflect a legitimate effort to meet a difficult assignment. The report provides some useful and relevant information related to the HJR 622 request, and relative to the issue of expanding the coverage of the Act. The report qualitatively describes the actions, benefits, and challenges that would be involved in expanding the territory covered by the CBLAD program. It also provides information on the current status of existing land use planning and ordinances in the expansion territory, qualitatively describes the types of costs that local governments would likely incur in participating in the program, and provides quantified estimates of State costs that might be incurred as part of an expansion effort. The report also provides a reasonable strategy for implementing the expansion effort.

However, the report seeks to assert the proven effectiveness of the Bay program in the Tidewater area as a part of the case for expanding the coverage of the Act to the western part of the watershed. This is a problematic aspect of the report, because it is premature at this time to argue that the Act itself has proven effective. Consequently, the report does not provide adequate evidence to establish this point. Instead, the report could have given more attention to what is known about the effectiveness of the key practices that are employed under the Bay Act program. Spe-

cifically, the report could have done a better job of describing what is known about the demonstrated (field-tested) effectiveness of practices such as the 100-foot buffer zone, while also acknowledging the limitations of and gaps in knowledge that still exist regarding these practices.

Further, the report does not succeed in overcoming a fundamental obstacle to meeting the study request – a lack of adequate information upon which to draw definitive conclusions about the benefits, costs, and the effects to local governments that are entailed in a westward expansion. The underlying assumption of the report -- that fully and accurately quantifying the costs of an expansion is not feasible at this time -- appears to be correct. However, the report could have gone further in addressing some information needs regarding the expansion of the program. For example, the report could have provided quantified best estimates for some elements of the expansion, based on available data, while clearly noting those elements that can only be addressed in qualitative discussion at this time. This would have provided an enhanced starting point for further discussion. (State agencies have provided estimates of costs and benefits for best management practices for achieving nonpoint source pollution reductions in other forums, such as in tributary strategy planning work). Also, the report does not adequately address the issue of the potential redundancy of Bay Act programs with other water quality programs that may be operative in the region, such as programs to develop farm plans.

Ultimately, though, the westward expansion is a policy decision that must be decided in the absence of fully conclusive data. There are risks to acting – the program may be more burdensome, more costly, and less effective than CBLAD hopes – and there are risks to not acting, in terms of the potential for increased water quality degradation and an inability of the State to meet its Chesapeake Bay Agreement commitments.

Two concerns tend to support a course of postponing a mandatory expansion of the program to most localities in the western part of the watershed, however. First, as discussed in prior chapters of this JLARC report, progress toward full implementation of the program in the current Tidewater region has been slow. Compliance review work has still not been fully implemented, the adequacy of program oversight for the purpose of ensuring local implementation is questionable, and the workload under the program has challenged the capacity of CBLAD's resources.

Second, this does not appear to be a particularly advantageous time for aggressively addressing the expansion issue. In considering various policy options, the difficulty of the State's current fiscal situation needs to be recognized. CBLAD itself, or in particular its grant funds, have been a target for budget cuts, and its status as an agency is unclear. State assistance may be critical for locality acceptance of the program in the westward part of the watershed, yet the State will likely have little funding to assist localities in implementing the program. This point presents a serious challenge for the State at this time, in terms of pursuing policies that would require that westward localities participate in the program.

The State may wish, however, to consider, some more limited actions in the short term to promote land management activities in the western part of the water-